Kembang Masyur Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A)-7–01 OF 2018
HAMID SULTAN, KAMALUDIN MD SAID AND LAU BEE LAN JJCA
20 JUNE 2019

Land Law — Acquisition of land — Objection against compensation — Reference to court — Land reference court increased original compensation award to landowner — Landowner appealed to Court of Appeal — Whether appeal incompetent and had to be dismissed — Whether s 40D(3) and proviso to s 49(1) of the Land Acquisition Act 1960 ('the LAA') barred appeals to higher courts against award of compensation — Whether landowner's appeal was essentially against quantum of compensation and did not involve any question of law although its memorandum of appeal at first blush gave impression that points of law were involved — Whether High Court judge committed no appealable error in coming to his decision — Whether judge complied with all provisions of the LAA and given reasons for coming to his own decision on the value of the acquired land after considering all evidence and the opinions of the assessors who sat with him

Following the compulsory acquisition of a part of the appellant's land for a road project, the appellant was awarded RM10,328,032 as compensation for the value of the land, RM5,224,918.40 for injurious affection and RM7,837,377.60 for severance. The appellant's objection to the said sums on the ground of insufficiency was referred to the High Court for determination before a judge sitting with two assessors. At the end of the land reference proceedings, the judge, after considering all the evidence and taking into account the opinions of the assessors, increased the awards to the appellant by the following amounts — an additional RM709,808 for the value of the land, RM539,089.60 more for injurious affection and RM538,634.40 more for severance. Still dissatisfied with the decision, the appellant obtained leave to appeal to the Court of Appeal. In its memorandum of appeal, the appellant enumerated various provisions both in the Land Acquisition Act 1960 ('the LAA') and in the Federal Constitution that the High Court judge had allegedly not complied with in coming to his decision. Essentially, the appellant's complaint was that the judge had not followed the opinions of the assessors as to the valuation of the acquired land and the compensation that should be awarded to the appellant and had determined the quantum on his own without giving any or sufficient reasons for doing so. The appellant contended that the judge had thereby acted arbitrarily, in contravention of the LAA, and had violated the rights and interests of the appellant under art 13 of the Federal Constitution. The respondent, on the other hand, argued that the appeal was

incompetent and should be dismissed because it was purely against the amount of compensation awarded by the High Court and hence was barred by s 40D(3) and the proviso to s 49(1) of the LAA.

Held, dismissing the appeal:

(1) There was no appealable error in the High Court judge's decision. The instant appeal was against the amount of compensation awarded by the High Court and not on point of law. Although the Federal Court in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 had ruled that aggrieved parties in land reference hearings could appeal on questions of law, this appeal was not one on questions of law. The appellant had failed to surmount the bar to appeal under the proviso to s 49(1) of the LAA. The appeal sought to impugn the decision of the High Court merely on the award of compensation. In the light of clear statutory provisions and the authorities, this ground of appeal was clearly incompetent and the appeal had to be dismissed *in limine* (see paras 18, 24 & 33).

(2) Although the appellant took great pains to couch its memorandum of appeal as if this appeal involved issues of law, there was no escaping the fact that it did not involve any questions of law whatsoever. A scrutiny of the memorandum of appeal revealed that the appellant's complaint actually entirely concerned an appeal on issues of fact on the ground of quantum of compensation and nothing else. The court agreed with the respondent that the entire grievances listed out by the appellant in relation to alleged non-compliance by the trial judge with the relevant paragraphs of the First Schedule of the LAA was clearly without basis and merit. The judge's grounds of judgment revealed that each and every paragraph referred to by the appellant in the First Schedule of the LAA had been comprehensively and appropriately dealt with (see paras 22–23).

(3) The High Court judge had fully complied with the requirements of the LAA. He had considered the valuation report of the appellant's valuer and the opinions of both the assessors before making a thorough analysis and providing a clear reasoning on how he had reached his decision on the land value (see paras 26–27 & 31–32).

[Bahasa Malaysia summary

Berikutan pemerolehan wajib sebahagian tanah perayu untuk projek jalan raya, perayu telah diawardkan RM10,328,032 sebagai pampasan bagi nilai tanah, RM5,224,918.40 untuk kesan mudarat dan RM7,837,377.60 untuk pemutusan. Bantahan perayu terhadap jumlah tersebut atas alasan kekurangan dirujuk ke Mahkamah Tinggi untuk penentuan di hadapan hakim mendengar bersama dua penilai. Pada akhir prosiding rujukan tanah, hakim, setelah

A mempertimbangkan semua keterangan dan mempertimbangkan pendapat penilai, meningkatkan award kepada perayu dengan jumlah berikut — tambahan RM709,808 untuk nilai tanah, RM539,089.60 lebih untuk kesan mudarat dan RM538,634.40 lebih untuk pemutusan. Masih tidak berpuas hati dengan keputusan itu, perayu mendapatkan kebenaran untuk merayu B kepada Mahkamah Rayuan. Dalam memorandum rayuannya, perayu menyatakan pelbagai peruntukan dalam Akta Pengambilan Tanah 1960 ('Akta') dan dalam Perlembagaan Persekutuan bahawa hakim Mahkamah Tinggi dikatakan tidak mematuhi dalam mendapatkan keputusannya. Pada dasarnya, aduan perayu adalah bahawa hakim tidak mengikuti pendapat C penilai tentang penilaian tanah yang diperoleh dan pampasan yang harus diberikan kepada perayu dan telah menentukan kuantum sendiri tanpa memberikan alasan atau alasan yang mencukupi untuk berbuat demikian. Perayu berpendapat bahawa hakim telah bertindak sewenang-wenangnya, dengan melanggar Akta, dan telah melanggar hak dan kepentingan perayu di D bawah perkara 13 Perlembagaan Persekutuan. Sebaliknya responden berpendapat bahawa rayuan itu tidak kompeten dan harus ditolak kerana ia adalah semata-mata terhadap jumlah pampasan yang diberikan oleh Mahkamah Tinggi dan oleh itu telah dihalang oleh s 40D(3) dan proviso kepada s 49(1) Akta.

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Diputuskan, menolak rayuan:

(1) Tiada kesilapan rayuan dalam keputusan hakim Mahkamah Tinggi. Rayuan ini adalah terhadap jumlah pampasan yang diberikan oleh F Mahkamah Tinggi dan bukan pada satu perkara undang-undang. Walaupun Mahkamah Persekutuan di *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 telah memutuskan bahawa pihak yang terkilan dalam pendengaran rujukan tanah boleh merayu atas persoalan undang-undang, rayuan ini bukanlah G satu persoalan undang-undang. Perayu telah gagal mengatasi *bar* untuk merayu di bawah proviso kepada s 49(1) Akta. Rayuan itu bertujuan untuk mempertikaikan keputusan Mahkamah Tinggi semata-mata atas penganugerahan pampasan. Memandangkan peruntukan undang-undang dan autoriti yang jelas, alasan rayuan ini jelas tidak H kompeten dan rayuan tersebut perlu ditolak *in limine* (lihat perenggan 18, 24 & 33).

(2) Walaupun perayu mengambil kesakitan besar untuk meletakkan memorandum rayuannya seolah-olah rayuan ini melibatkan isu undang-undang, tidak boleh dielakkan daripada hakikat bahawa ia tidak I melibatkan apa-apa persoalan undang-undang. Penelitian memorandum rayuan mendedahkan bahawa aduan perayu sebenarnya berkenaan rayuan atas isu fakta berdasarkan kuantum pampasan dan tidak ada yang lain. Mahkamah bersetuju dengan responden bahawa kesemua rungutan yang disenaraikan oleh perayu berkaitan dengan dakwaan

ketidakpatuhan oleh hakim bicara dengan perenggan yang berkaitan dalam Jadual Pertama Akta adalah jelas tanpa asas dan merit. Alasan penghakiman hakim mendedahkan bahawa setiap perenggan yang dirujuk oleh perayu dalam Jadual Pertama Akta telah secara menyeluruh dan tepat ditangani (lihat perenggan 22–23).

(3) Hakim Mahkamah Tinggi telah mematuhi sepenuhnya kehendak Akta. Beliau telah mempertimbangkan laporan penilaian penilai perayu dan pendapat kedua penilai sebelum membuat analisis menyeluruh dan memberikan alasan yang jelas mengenai bagaimana dia telah mencapai keputusannya mengenai nilai tanah (lihat perenggan 26–27 & 31–32).]

Notes

For cases on objection against compensation, see 8(2) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 2526–2529.

Cases referred to

Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561; [2017] 5 CLJ 526, FC (refd)

Legislation referred to

Federal Constitution arts 8(1), 13, 13(1), (2)
Land Acquisition Act 1960 ss 40A, 40B, 40C, 40D, 40D(3), 45(1A), 47, 47(1), (2), (3), 49, 49(1), First Schedule, paras 1(1A), (1B), (2BA), 2(a), (c), (d), Third Schedule, para 2(1), Forms N, O

Appeal from: Land Reference No 15–10–10 of 2015 (High Court, Kuala Lumpur)

Wong Chong Wah (Amarjeet Singh, Wong Chun Keat and Yee Wui Khong with him) (Zubeda & Amarjeet) for the appellant.
Nazran bin Mohd Sham (Senior Federal Counsel, Attoney General's Chambers) for the respondent.

Kamaludin Md Said JCA:

INTRODUCTION

[1] This is an appeal against the decision of the High Court dated 7 December 2017. The order of the High Court is at pp 12–13 of the appeal record (Vol 1) Part A and B ('AR Vol 1'). Proceedings at the High Court was pertaining to land acquisition of the appellant's land. The appellant is not satisfied with the award of additional compensation to the appellant for the compulsory acquired portion of land, additional compensation for severance and injurious affection for Portion A and additional compensation for

A severance and injurious affection for Portion B of the subject land based on the increased market value.

SALIENT FACTS

B **[2]** The appellant is registered owner of a land with a total area of 19,728 sqmt equivalent to about 1.9728 hectares. The area of 3,256 sqmt equivalent to about 0.3256 hectares (16.5% of the land area) was compulsorily acquired leaving a remaining area of 16,472 sqmt (83.5% of the land area) for the *Projek Pembinaan Jalan di Desa Petaling, Kuala Lumpur*, via Federal Government C *Gazette* No 33926 dated 20 October 2014.

[3] After the enquiry was done into the value of the land to assess the amount of compensation for the acquisition on 11 March 2015, the respondent made D an award of compensation for the applicant totalling RM23,390,328 on the following terms:

(a) RM10,328.032 for land value at RM3,172 per square metres;

(b) RM5,224,918.40 for injurious affection at 10%; and

E (c) RM7,837,377.60 for severance at 15%.

[4] The appellant filed the requisite Form N to object to the respondent's award on the primary ground of insufficiency of the award for land value, injurious affection and severance. The appellant's objections were referred to F the court vide the respondent's Form O dated 30 June 2015.

[5] The trial of the land reference proceeded at the High Court of Kuala Lumpur on 13 November 2017, and was heard by the learned High Court judge with the presence of the two learned assessors.

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[6] On 7 December 2017 the learned judge allowed the appellant's objections and ordered among others that the respondent's award be increased on the following terms:

H (a) additional compensation for land value RM709,808 at the rate of RM3,390 per square metres;

(b) additional compensation of RM538,634.40 for severance at the rate of 15%; and

I (c) additional compensation of RM359,089.60 for injurious affection at the rate of 10%.

[7] The High Court judge's grounds of judgment dated 7 December 2017 is at pp 19–34 of the AR (Vol 1).

THE GROUNDS OF APPEAL

[8] In the memorandum of appeal at pp 5–11 of the AR (Vol 1), the appellant sets out various grounds which in this appeal it can be summarised that the appellant is raising the following issues:

(a) that the learned High Court judge, in reaching his decision, failed to take into account matters provided for in the First Schedule of the Land Acquisition Act 1960 ('Act 486'), specifically paras 1(1A), (1B), (2BA), as well as paras 2(a), (c) and (d); and

(b) there was a non-compliance of ss 40C, 40D, 45(1A), 47(1) and/or 47(2) and/or 47(3) of Act 486 and/or art 8(1) and/or art 13(1) and/or (2) of the Federal Constitution when the learned High Court judge made his decision.

[9] It was the appellant's submission that the High Court judge's decision was formed without complying with the statutory provisions or the mandatory procedure under Act 486. The High Court judge was said to have failed to correctly consider the opinion rendered by both the government assessor and the private assessor which caused the High Court judge's decision to be inconsistent or wrongful with regards to the proper valuations made by the assessors.

[10] Further, the High Court judge arbitrarily or wrongfully departed from the valuations made for compensation as opined by the assessors without giving any or sufficient reasons for doing so. The learned High Court judge failed to take into consideration or sufficient consideration of the actual scope of the statutory provision for damage suffered or likely to be suffered by the appellant for injurious affection and severance to the remaining area of the appellant's acquired land.

[11] The appellant relied on ss 40A and 40C of Act 486 which clearly set out the role and duties of assessors who sit with a judge in a land reference proceeding. It was the appellant's case that there was a breach of ss 40A and 40C. Section 40A provides that when the objection before the court is in regard to the amount of compensation, two assessors shall be appointed for the purpose of aiding the judge in determining the objection and in arriving at a fair and reasonable amount of compensation. Section 40C imposes a duty on the assessors to consider the various heads of compensation claimed by the interested persons and form their expert opinion. It also makes it mandatory that the opinion of the assessors on the heads of compensation be given in writing and shall be recorded by the judge.

[12] The rationale for ss 40A and 40C according to the appellant, is

explained in the recent Federal Court case *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561; [2017] 5 CLJ 526 where Zainun Ali FCJ at p 611 (MLJ); pp 576–577 (CLJ) said:

> [185] ... It has to be remembered that the valuation of the land and assessment of compensation arising out of the acquisition are not a mathematical process. The requisites of valuation and assessment are pertinent, to show that the opinion given on the amount of compensation is well founded.

[13] It was submitted that the High Court judge failed to take recognisance of the assessors' report and the opinion rendered therein that formed the statutory basis for arriving at the fair and reasonable amount of compensation payable to the landowner as mandated in law under s 40A.

[14] Pursuant to the *Semenyih Jaya* case, it was submitted that the new position of law is that the judicial power to determine the amount of compensation inherently lies in the judge's hands but if the judge does not agree with the assessors' opinion, he must give reason for doing so. The relevant passages from the *Semenyih Jaya* case, at p 599 (MLJ); p 565 (CLJ) are reproduced as follows:

> [122] However, the assessors have no more role as soon as they put their opinion in writing. At the risk of tedium, it bears repeating that it is for the judge and the judge alone to exercise his mind and determine the issues before him, based on the advice given by the assessors.
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> [123] It is reiterated that the opinion of the assessors is not binding on the judge. In the event the assessors disagree (as between themselves regarding the amount of compensation to be awarded in a particular case), the judge may, after considering both opinions, elect to consider which of the two opinions in his view is appropriate in the circumstances of the case. However, he is not bound by either one of the opinions. Should the judge find himself in disagreement with the opinion of both the assessors, he is at liberty to decide the matter, giving his reasons for so doing.

[15] It was therefore submitted that the judge must still take into consideration the opinion of the both assessors, being the experts in the matter of valuation, and any departure from their as expert opinion must be based on cogent or valid reasons. Otherwise, ss 40A, 40B and 40C of Act 486 being the mandatory provisions of the law would have become meaningless or redundant, thereby depriving the court of the need for having the assessors to give their expert opinion.

[16] The appellant submitted that the High Court judge in this case clearly failed to provide his reasons for not following the assessors' opinion when expressing his view on the proper and fair market value of the acquired land by stating a lower value than the value expressed by both the assessors and has

acted arbitrarily contrary to ss 40A and 40C of Act 486 and thus violated the interest and rights of the appellant guaranteed under art 13 of the Federal Constitution. This merits an appellate intervention as illustrated in the *Semenyih Jaya* case at pp 610–611 (MLJ); pp 576–577 (CLJ):

> [178] We are of the view that non-compliance with s 40C of the Act amounts to a misdirection which merits appellate intervention. ... The appellant's constitutional right to a fair and reasonable compensation arising from compulsory acquisition has been violated because the statutory safeguards to determine the amount of compensation awarded as stated in s 40C of the Act was not complied with.
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> ...
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> [182] Thus, in cases where there is failure to observe the procedure as set out in the Act as in the instant appeal, there is a breach of the safeguards provided for in art 13(1) of the Federal Constitution, of the principle couched therein, which is 'save in accordance with law'. Can appeals be limited if there is non-compliance with s 40C of the Act? The answer must be in the negative. The bar to appeal in sub-s 49(1) does not operate when there is non-compliance with the statutory provisions of the Act.

[17] It was the appellant's submission that *Semenyih Jaya* case applies equally to s 40A, that is, the judge must comply with the provision of s 40A. At pp 610 and 614 (MLJ); pp 579–580 (CLJ) the Federal Court said as follows:

> Adequate Compensation
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> [179] Article 13(2) is a constitutional safeguard to land owners to receive 'adequate compensation' upon acquisition. Even as the Act authorises the state to acquire land from land owners the law provides that the person deprived of his property must be adequately compensated.
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> [198] But what is adequate compensation for a person who has been deprived of his or her property? The term 'adequate compensation' is not defined in the Act. In *Pentadbir Tanah Daerah Gombak lwn Huat Heng (Lim Low & Sons) Sdn Bhd* [1990] 3 MLJ 282, the Supreme Court held that 'the basic principle governing compensation is that the sum awarded should, so far as practicable, place the person in the same financial position as he would have been in had there been no question of his land being compulsorily acquired' (see *Compulsory Acquisition and Compensation* by Sir Frederick Corfield QC and RJA Carnwath).
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> [199] The above principle is known as the principle of equivalence. By this principle, the affected land owners and occupants are entitled to be compensated fairly for their loss. But they should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land.

OUR DECISION

[18] We had read the High Court judge's grounds of judgment. We were satisfied that there is no appealable error in the High Court judge's decision.

The appeal before us was on the amount of compensation awarded by the High Court judge and not point of law which the appellant was trying hard to convince us that there was breach of ss 40A and 40C of Act 486. We found the appellant's appeal has no merit and it is our unanimous decision that the appeal was dismissed with costs of RM5,000 subject to allocator fee and if the deposit is paid, it is to be refunded to the appellant. We gave our reasons.

[19] As correctly submitted by the respondent, proceedings pertaining to land acquisition are governed by the provisions provided under Act 486. The provisions of ss 40D(3) and 49(1) of Act 486 read as follows:

> Section 40D — Decision of the Court on compensation
>
> (3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter
>
> Section 49 — Appeal from decision as to compensation
>
> (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> *Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.*

[20] In *Semenyih Jaya* case, at pp 575–576, amongst the questions of law framed for the consideration of the Federal Court included:

(a) whether there is a right of appeal to the Court of Appeal against a decision of the High Court (consisting of a judge and two assessors) involving compensation for land acquisition on a question of law in the light of s 40D(3) and the provision to s 49 of the Land Acquisition Act 1960 ('the Act') as amended by Act 1999;

(b) whether s 40D(3) could validly apply to limit appeals if the decision-making process provided for in s 40D(3) is constitutionally invalid; and

(c) whether the limitation of appeals in s 40D(3) or the proviso to s 49 could apply in the absence of strict compliance with the new procedure envisaged in ss 40C and 40D?

[21] The Federal Court re-examined the provisions of ss 40D(3) and 49 of Act 486 and at p 605, it held as follows:

> To sum up, the proviso to sub-s 49(1) of the Act does not represent a complete bar on all appeals to the Court of Appeal from the High Court on all questions of compensation. Instead the bar to appeal in sub-s 49(1) of the Act is limited to issues of fact on ground of quantum of compensation. Therefore, an aggrieved party has

the right to appeal against the decision of the High Court on questions of law. A

[22] As we had alluded to earlier, although the appellant took great pains to couch their memorandum of appeal as if this appeal appears to involve issues of law, there is however no escaping the fact that this appeal does not involve any questions of law whatsoever. A scrutiny of the appellant's memorandum of appeal would reveal that in whole the appellant's complaint actually entirely concerns its appeal on issues of fact on ground of quantum of compensation and nothing else. B

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[23] We agreed with the respondent that the entire grievances listed out by the appellant in relation to non-compliance of the First Schedule of Act 486 (specifically paras 1(1A), (1B), (2BA), as well as paras 2(a), (c) and (d)) against the learned High Court judge is clearly without basis and merit. The learned High Court judge's grounds of judgment reveals that each and every paragraph referred to by the appellant in the First Schedule of Act 486 has been comprehensively and appropriately dealt with. It was only unfortunate for the appellant that the High Court judge was only agreeable to the arguments and justifications put forth by the appellant and that was simply it. D

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[24] The appellant cannot escape from the fact that their appeal is a challenge to impugn the decision of the High Court merely on the award of compensation. In light of the clear statutory provisions and the aforementioned authorities, this ground of appeal is clearly incompetent and ought to be dismissed *in limine*. F

[25] The appellant contended that there was a non-compliance of ss 40C, 40D, 45(1A), 47(1) and/or 47(3) of Act 486 because of the following grounds:

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(a) the opinions of both the assessors were not recorded in writing and/or were not mentioned in the decision pronounced on 7 December 2017;

(b) the opinions of both the assessors were not considered or were wrongly considered by the learned High Court judge;

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(c) the decision by the learned High Court judge was not in line with the opinions of the assessors or was made outside the scope of Act 486;

(d) the provisions of the Third Schedule of Act 486 was not fully complied with when the learned High Court judge failed to accept the appellant's valuation report which has established a prima facie case for the appellant; and I

(e) there was no written award given on 7 December 2017 as required under ss 47(1), 47(2) and 47(3) of Act 486.

[26] We agreed with the respondent that it is without a doubt that the learned High Court judge had fully complied with the requirements of ss 40C and 40D of Act 486. The High Court judge had considered the opinion of the both assessors. The written opinion of both the assessors which were provided to the High Court judge is at pp 5–30 of supplementary record of appeal, Part A.

[27] The grounds of judgment of the learned High Court judge at para 15 clearly shows that he had studied and considered the comparable reports on the acquired land from the government valuer and private valuer and made his own decision when he said as follows:

> Setelah meneliti secara terperinci perbandingan-perbandingan yang dibuat dalam kes ini, saya dapati perbandingan 2 oleh penilai kerajaan iaitu Lot 34225 mempunyai ciri-ciri yang hampir setanding dengan tanah berjadual. Harga transaksi tanah perbandingan 2 ini adalah RM3,229.17 satu meter persegi dan setelah dibuat sedikit penyelarasan berhubung lokasi, akses, saiz tanah dan perancangan bagi tanah berkenaan, di samping mengambilkira pandangan kedua-dua pengapit dalam kes ini, mahkamah memutuskan nilai tanah berjadual yang berpatutan adalah RM3,390.00 satu meter persegi.

[28] The sealed order of the High Court dated 7 December 2017 clearly states that the High Court judge had considered the assessors' opinion. See the order of the High Court below:

> PERINTAH
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> KES RUJUKAN TANAH ini ditetapkan untuk bicara pada 13 haribulan November 2017 dalam kehadiran Wong Chong Wah bersama Amarjeet Singh, Wong Chun Keat dan Yee Wee Khong, Peguam-Peguam bagi pihak Pemohon dan Narkunavathy Sundareson, Peguam Kanan Persekutuan (Datuk Nazran Bin Mohd Sham, Peguam Kanan Persekutuan bersamanya) bagi pihak Penentang DAN SETELAH MEMBACA Ikatan Rujukan Tanah, Laporan Penilai Swasta bertarikh 19.1.2015, Laporan Penilai Kerajaan bertarikh 4.2.2015, Laporan Jawapan Penilai Swasta bertarikh 8.1.2016, Jawapan Penilai Kerajaan bertarikh 19.1.2016, Laporan Jawapan Penilai Swasta bertarikh 22.2.2016, Laporan Tambahan Penilai Swasta bertarikh 20.5.2017, Pelan Bersama, Pelan Lokasi Perbandingan (Apendik F), Afidavit Pemohon yang diikrarkan oleh Ng Choo Yiew pada 12.4.2016 dan Afidavit Tambahan Pemohon yang diikrarkan oleh Ng Choo Yiew pada 19.9.2016, kesemuanya difailkan disini, DAN SETELAH MEMBACA hujahan bertulis kedua-dua pihak DAN SETELAH MENDENGAR Peguam kedua pihak DAN SETELAH MENIMBANG pendapat Pengapit-Pengapit tersebut dan ditangguhkan untuk keputusan pada hari ini MAKA ADALAH DIPERINTAHKAN bahawa:
>
> 1. Penentang membayar pampasan tambahan pada kadar nilai tanah sebanyak RM 3,390.00 persegi meter seperti berikut:
>
> (i) untuk nilai tanah sebanyak RM709,808.00;

(ii) untuk pecah pisah dan perjejasan terbabit bagi Portion A sebanyak RM538,634.40;

(iii) untuk pecah pisah dan penjejasan terbabit bagi Portion B sebanyak RM359,089.60.

2. Peratus sebanyak 15% bagi pemutusan dan peratus sebanyak 10% bagi kesan mudarat seperti yang diberikan oleh Penentang adalah dikekalkan.

3. Penentang membayar caj lewat bayaran pada kadar 8% setahun atas keseluruhan pampasan tambahan yang tersebut dalam perenggan 1 di atas sini dari tarikh Borang K (iaitu bertarikh 3.8.2015) sehingga tarikh pembayaran penuh dibuat.

4. Penentang membayar keseluruhan pampasan tambahan yang tersebut dan caj lewat bayaran tersebut ke akaun klien peguamcara Pemohon (iaitu Tetuan Zubeda & Amarjeet).

5. Deposit RM3,000.00 hendaklah dikembalikan kepada Pemohon.

6. Pemohon membayar fi Pengapit sebanyak RM1,000.00 setiap Pengapit dalam tempoh 2 minggu dari tarikh Perintah ini.

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Penolong Kanan Pendaftar Mahkamah Tinggi

Kuala Lumpur

[29] Section 47 of Act 486 reads as follows:

(1) Every decision made under this Part shall be in writing signed by the Judge and the assessors.

(2) Where such decision comprises an award of compensation it shall specify —

(a) the amount awarded on account of the market value of the land under section 2(a) of the First Schedule;

(b) the amount, if any, deducted under section 2(b) of the First Schedule;

(c) the amounts, if any, respectively awarded under sections 2(c), (d) and (e) of the First Schedule; and

(d) in respect of each such amount, the grounds for awarding or deduction the said amounts.

(3) Every such written decision or award shall be deemed to be a decree and the statement of the grounds of any such award a judgement within the meaning of the law for the time being in force relating to civil procedure.

[30] The written award of the land reference court dated 7 December 2017 and signed by the learned judge and assessors on the same date which is

A exhibited on pp 2–4 of the additional record of appeal, Part A is the written award required under s 47 of Act 486. Clearly the appellant's complaint is without basis. The written award is reproduced as follows:

4.0 KEPUTUSAN MAHKAMAH

B 4.1 Saya telah mengambil kira perbandingan yang dikemukakan oleh kedua-dua pihak dan perbandingan dan mempunyai ciri yang berlainan. Penilaian keseluruhan yang dibuat. Saya dapati nilai tanah yang berpatutan adalah RM3,390.00 psm. Oleh itu awad pada RM3,390.00 psm adalah berjumlah RM11,037,840.00. Awad yang diberikan oleh pentadbir tanah pada RM3,172.00
C adalah RM10,328,032.00. Sehubungan itu awad tambahan adalah RM11,037,840.00 – RM10,328,032.00 = RM709,808.00;

4.2 Awad severance dan IA oleh Pentadbir Tanah iaitu bagi severance 15% dari nilai tanah baki iaitu RM7,837,377.00 dan 10% bagi IA dari nilai tanah baki iaitu RM5,224,918.40 adalah dikekalkan;

D 4.3 Walau bagaimanapun setelah nilai tanah pada RM3,390.00 psm, maka pengiraan awad baru bagi severance dan IA adalah seperti berikut —

Severance

15% x 6,472 sm x RM3,390.00 psm = RM8,376,012.00 Awad tambahan =
E RM8,376,012.00 – RM7,837,377.60 (Awad PT) = RM 538,634.40

IA

10% x 16,472 sm x RM3,390.00 psm = RM5,584,008.00 Awad tambahan = RM5,584,008.00 – RM5,224,918.40 (Awad PT) = RM359,089.00;

F 4.4 Jumlah awad tambahan berkeseluruhan

RM709,808.00 + RM538,634.40 + 359,089.00 = RM1, 607,532.00;

4.5 Responden diperintah membayar faedah 8% dari tarikh Borang K bagi jumlah tambahan;

G 4.6 Deposit RM3,000.00 dikembalikan kepada Pemohon;

4.7 Pemohon membayar fi pengapit swasta dan pengapit kerajaan RM1,000.00 setiap seorang iaitu bagi hari persidangan dan dibayar dalam tempoh 2 minggu dari tarikh perintah;

H 4.8 Jumlah awad tambahan di masukkan ke dalam client's account peguam pemohon untuk dibayar kepada pemohon.

T.T

YA DATO NORDIN BIN HASSAN

I Hakim

Bertarikh: 7.12.2017

T.T
HAJI SUHAIMI BIN HARUN

T.T
EN. ERY ZUWARDI BIN ANUAR

Assessor Kerajaan	Assessor Swasta
Bertarikh: 7.12.2017	Bertarikh 7.12.2017

[31] It is evident that the land reference court was mindful of its responsibilities under the provision of s 47 of Act 486 to set out the details of its decision on compensation. The land reference court pronounced the award in open court on 7 December 2017 in exactly the same terms as the written award. Section 47(3) of Act 486 says that every such written decision or award shall be deemed to be a decree and the statement of the grounds of any such award a judgment within the meaning of the law for the time being in force relating to civil procedure.

[32] The appellant's complaint that there was non-compliance of s 45(1A) of Act 486 too is devoid of merit. The learned High Court judge was very much aware of the principle on burden of proof in the context of land acquisition as provided under para 2(1) in the Third Schedule of Act 486 which provides that the applicant's valuer's report alone must establish a prima facie case for the applicant. We were satisfied that the High Court judge's grounds of judgment clearly reveals this and that it further shows that he did take into account the valuation and the comparable exercise contained in the valuation report undertaken and prepared by the appellant's private valuer (see paras 6–13 at pp 24–27 of the judgment). The learned High Court judge in fact considered the opinions and justification of both the government and private valuer before proceeding to make a thorough analysis of the same and provided clear reasoning on how he reached his decision pertaining to land value as illustrated at paras 14–16 at pp 28–29 of the grounds of judgment.

CONCLUSION

[33] We reiterated our view that although the Federal Court has ruled that aggrieved parties in Land Reference hearings can appeal on questions of law, this appeal, as has been illustrated above, is not an appeal on questions of law. The appellants have failed to surmount the bar to appeal under the proviso of s 49(1) of Act 486. For these reasons, it is our unanimous decision that this appeal is dismissed with costs of RM5,000 subject to an allocator fee and the deposit if paid is to be refunded to the appellant.

Appeal dismissed.

Reported by Ashok Kumar